(57)

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No. 1698 of 2006

PETITIONER : M/s. Ghanshyam Das Agrawal.

VERSUS

RESPONDENTS : State of Chhattisgarh & another

Post for order on 1.10.2007

Sd/-
Satish K.Agnihotri
Judge

(58)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 1698 of 2006

PETITIONER : M/s. Ghanshyam Das Agrawal, through Proprietor Narayan Das Goyal, aged about 59 years, S/o Late Ram Chandra Goyal, Resident of Second Floor, Vasant Vihar, Kamptee Line, Rajnandgaon (CG)

VERSUS

RESPONDENTS : 1. State of Chhattisgarh, through Secretary, Water Resources Department, D.K.S. Bhavan, Mantralaya, Raipur (CG)

2. The Executive Engineer, Water Resources Department (Chirpani Project Division) Kawardha District Kawardha (CG)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present: Shri P.S.Koshy, Advocate for the petitioner.
Shri Sumesh Bajaj, Government Advocate for the State/respondents.

ORDER

(Passed on ..15th..day of October, 2007)

1. The petitioner impugns the order dated 01.12.2005 (Annexure P/4) passed by Chhattisgarh Madhyastham Adhikaran, Raipur (for short "the Adhikaran") in reference case No. 7 of 2005 whereby the said reference case was dropped, and the order dated 14.02.2006 (Annexure P/7) passed in MJC No. 4 of 2006, by the Adhikaran, whereby the application for review of order dated 01.12.2005 was dismissed. Alternatively, it was prayed that the order dated 05.01.2006 (Annexure P/5) passed by the District Judge, Kawardha, whereunder the application of the petitioner filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 was returned back with an observation to take recourse to the remedy under the provisions of Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as 'the Adhiniyam, 1983').

2. The facts, in nutshell are that the petitioner entered into a works contract with the State Government under agreement No. 9/D.L./89-90 with regard to the execution of civil works in Chirpani Project, Rajnandgaon (presently Kawardha District). A dispute arose with regard to payment of certain amount. The petitioner filed a Reference Case on 27.02.1991 under provisions of Section 7 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 before Madhya Pradesh Madhyatham Adhikaran. The case was registered as Reference Case No. 34 of 1991.

3. In the meantime, the State of Chhattisgarh came into existence with effect from 01.11.2000. By virtue of Section 74 of the Madhya Pradesh Reorganization Act, 2000, the Madhya Pradesh Madhyastham Adhikaran continued to have jurisdiction over all the matters arising from the State of Chhattisgarh also, till 31.10.2002. The jurisdiction of Madhya Pradesh Madhyastaham Adhikaran came to an end w.e.f. 01.11.2002. There was no Madhyastham Adhikaran from 01.11.2002 to 01.03.2005 until the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 came into force by notification.

4. During the absence of Madhyastham Adhikaran, the petitioner preferred an application under sub clause (c) of Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996') in the Court of District Judge, Kawardha. The said application was registered as MJC No. 1 of 2005 on 14.01.2005. The pending reference before the Madhya Pradesh Madhyastham Adhikaran, after coming into existence of Chhattisgarh Madhyastham Adhikaran, was registered as reference case No. 7 of 2005.

5. In view of the pending application MJC No. 1 of 2005 in the Court of District Judge, Kawardha, the petitioner made an application before the Adhikaran on

10.11.2005 for dropping the reference. Accordingly, the Adhikaran, vide order dated 01.12.2005 (Annexure P/4) dropped the petition holding as under:

> "11. In view of our discussion, indicated here in above, the proceedings of this reference petition are hereby dropped."

6. The District Judge, Kawardha, having come to know about the existence of the Adhikaran, returned the application of the petitioner filed under Section 11(6) of the Act, 1996 under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, with an observation that the petitioner may take up the matter to the Adhikaran. The petitioner, thereafter, moved the Adhikaran under the provisions of Section 17-A of the Adhiniyam, 1983 that the pending reference case No. 7 of 2005 be reviewed and heard on merit.

7. The learned Adhikaran, vide order dated 14.02.2006 (Annexure P/7) dismissed the said application on the ground that the reference was dismissed on 01.12.2005 on merit and thereafter, there was no ground to review the same.

8. Shri Sumesh Bajaj, learned Government Advocate for the State/respondents would submit that the matter be remanded back to the Adhikaran with a direction to consider the reference case No. 7/2005 on merit as the same was dropped vide order dated 01.12.2005 (Annexure P/4) on the basis of application made by the petitioner in view of the pendency of the application in the Court of District Judge, Kawardha.

9. I have heard the learned counsel for the parties, perused the documents and records appended thereto. It is evident from the order dated 01.12.2005 (Annexure P/4) that the reference was not decided on merit, but the same was dropped. Therefore, the subsequent impugned order dated 14.02.2006 (Annexure P/7) passed by the Adhikaran, holding that the reference was

dismissed on 01.12.2005 on merit, is erroneous. The interest of justice would suffice if the order dated 01.12.2005 (Annexure P/4) and 14.02.2006 (Annexure P/7) are quashed and the matter is remanded back to the Adhikaran to consider the reference on merit in accordance with law.

10. In view of the foregoing, the petition is accordingly allowed and the matter is remitted back to the Chhattisgarh Madhyastham Adhikaran, Raipur, for considering and deciding the matter afresh and pass order in accordance with law. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

Amit